IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

CRL.A.No. 257 of 1999(B)

ST.603/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT, CHITTUR

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APPELLANT/COMPLAINANT:

VELUMONY, S/O.RAGHAVAN,
3/349/BAZAR ROAD, CHITTUR.

BY ADV. SRI.G.HARIHARAN

RESPONDENTS/STATE & ACCUSED:

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1. STATE OF KERALA, REP. BY ITS PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. RAMACHANDRAN, S/O.KANNAN NAIR,
   RAMA MANDIRAM, DEVANAGAPURAM, CHITTUR.

R1 BY BY PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.257 OF 1999

Dated 22nd November, 2006

JUDGMENT

This appeal is filed against acquittal of the accused when the complainant was not present. Even though accused can be acquitted under section 256(1) of the Criminal Procedure Code for the absence of complainant, it should not be done mechanically. In this case, on various postings the complainant was present, but, according to the complainant, the date of posting was mistakenly noted by the clerk and, therefore, when the case was called there was no representation on that day and the Magistrate passed the order of acquittal. In the above circumstances, I set aside the order of acquittal and remand the matter to the trial court for proceeding with the matter according to law. Even though notice was received by the second respondent, the accused, it is seen that there is no appearance before this court. Complainant shall appear before the trial court on 18.12.2006. The trial court shall intimate the date of posting to the Advocate appeared for the accused before the trial court.

The appeal is allowed by way of remand.

J.B.KOSHY
Judge

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